

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.S.A. 52:14B-5.1c, N.J.A.C. 12:110, Occupational Safety and Health Procedural Standards for Public Employees, is scheduled to expire on June 8, 2003. As a result, the Department has reviewed these rules to determine whether they are necessary, reasonable and proper for the purposes for which they were originally promulgated.

A summary of the subchapters of N.J.A.C. 12:110 follows:

Subchapter 1 sets forth the rules' general provisions.

Subchapter 2 contains the words and terms used throughout the chapter.

Subchapter 3 sets forth the responsibilities and rights for the procedures developed for the safety and health programs under the Act.

Subchapter 4 establishes procedural rules on inspection, orders to comply and penalties.

Subchapter 5 establishes procedural rules for recording and reporting occupational injuries and illnesses of public employees.

Subchapter 6 establishes rules of practice for administrative proceedings to grant variances under N.J.S.A. 34:6A-39.

Subchapter 7 establishes the procedural rules governing a public employee's allegations of discrimination by a public employer or person.

Subchapter 8 sets forth the requirements for the establishment of a consultation program for public employers.

Subchapter 9 delineates the standards and publications referred to in the chapter.

On January 11, 2001, the New Jersey Public Employees' State Plan, a State Occupational Safety and Health Plan (applicable only to public sector employees of the State and its political subdivisions), was approved by the U.S. Department of Labor, Occupational Safety and Health Administration, as a developmental plan under Section 18 of the Occupational Safety and Health Act of 1970 and 29 CFR §1956.

In accordance with the New Jersey Public Employees' Occupational Safety and Health Act and its obligations under the Federal OSHA State Plan, New Jersey has adopted Federal standards by reference and has made a commitment to amend all of its State standards to be at least as stringent as the Federal OSHA requirements.

The proposed amendments to N.J.A.C. 12:110 as noted above will bring New Jersey's regulatory requirements and standards into compliance with those mandated by the U.S. Department of Labor, Occupational Safety and Health Administration.

N.J.A.C. 12:110-4.4, which governs the conduct of inspections, has been amended to include a new subsection (l) which provides the imposition of administrative penalties for making false verbal or written statements during any part of the inspection process to either the Commissioner of Labor or Commissioner of Health and Senior Services as defined in N.J.A.C. 12:110-2.1.

N.J.A.C. 12:110-5, Recording and Reporting Occupational Injuries and Illnesses, has been amended at N.J.A.C. 12:110-5.1 to state that New Jersey adopted 29 CFR §1904, Recording and Reporting Occupational Injuries and Illnesses by reference on September 4, 2001 (see 33 N.J.R. 2994(a)), through publication in the New Jersey Register with the following exceptions:

All references to the Federal Occupational Safety and Health Administration, including, but not limited to, the Secretary of Labor, the Occupational Safety and Health Administration, Occupational Safety and Health Administration Forms 300, 300A, and 301, are hereby amended to mean the New Jersey Department of Labor, Office of Public Employees Occupational Safety and Health, and the New Jersey Occupational Safety and Health Forms 300, 300A, and 301, respectively. Any other Federal OSHA references contained in 29 CFR §1904 are also amended to be New Jersey and New Jersey Department of Labor specific. N.J.A.C. 12:110-5.1 has also been amended to state that all public employers, as defined in N.J.A.C. 12:110-2, are required to report fatalities and multiple hospitalization incidents to the Office of Public Employees Occupational Safety and Health in accordance with 29 CFR §1904.39. In addition, the sentence which reads "[a]ny information which identifies an individual employee shall be confidential" has been deleted to conform with the Federal regulation. N.J.A.C. 12:110-5.2 through 5.12 have been repealed to eliminate any contradictions or duplications between the two standards.

N.J.A.C. 12:110-6.5(g) and 6.6(d) have been amended in order to designate the New Jersey Department of Labor website at www.state.nj.us/labor/ and a newspaper situated in the geographical area where the variance was requested as the means of publication of the terms of an Order issued by the

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DIVISION OF PUBLIC SAFETY AND OCCUPATIONAL SAFETY AND HEALTH

Occupational Safety and Health Procedural Standards for Public Employees

Proposed Readoption with Amendments: N.J.A.C. 12:110

Proposed Repeals: N.J.A.C. 12:110-5.2 through 5.12

Authorized By: Albert G. Kroll, Commissioner, Department of Labor.

Authority: N.J.S.A. 34:6A-25 et seq., specifically N.J.S.A. 34:6A-32 et seq.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2003-28.

A public hearing on the proposed amendments will be held on the following date at the following location:

Monday, March 3, 2003
10:00 A.M. to 12:00 Noon
New Jersey Department of Labor
13th Floor Auditorium
Trenton, New Jersey

Please call the Office of Regulatory Services at (609) 292-7375 if you wish to be included on the list of speakers.

Submit written comments by March 22, 2003 to:

Frederick S. Cohen, Regulatory Officer
Office of Regulatory Services
New Jersey Department of Labor
PO Box 110—13th Floor
Trenton, New Jersey 08625-0110
Fax: (609) 292-8246

If you need this document in braille, large print or audiocassette, contact the Office of Communications at (609) 292-3221, or NJ Relay (TTY) at 1-800-852-7899.

Commissioner granting relief pending a hearing when an employer submits an application for temporary variances.

N.J.A.C. 12:110-6.6(c) has been deleted to eliminate the Commissioner's ability to issue one interim order granting relief pending a hearing. N.J.A.C. 12:110-6.6(d) and (e) have been recodified as (c) and (d), respectively, as a result of the amendment. This provision was removed as it conflicts with Federal OSHA variance requirements that do not presently allow for the issuance of an interim order.

N.J.A.C. 12:110-7.6 has been amended by adding a new subsection (a) which requires expungement of warnings, reprimands, or derogatory references resulting from a protected activity which may have been placed in a complainant's personnel file; recodifying all subsequent subsections; and eliminating N.J.A.C. 12:110-7.6(b)1, which precludes overtime and holiday premium pay from back pay calculations and adding a new paragraph (c)4, which permits overtime and holiday premium pay to be included in determining back pay.

N.J.A.C. 12:110-7.7 has been amended at subsection (a) to require that the Commissioner, or his or her designee, make an initial determination based on the information contained in the complaint and upon any personal contact with the complainant, to determine whether an adverse action appears to have taken place while the complainant was engaged in a protected activity. If such a determination is made, the complainant and employer shall be given a 20-day period within which to submit written arguments and documentation in support thereof.

N.J.A.C. 12:110-7.7(b), which requires that all arguments and documentation submitted by a party be simultaneously served on all other parties along with evidence of service, has been deleted as the requirement exceeds the Federal OSHA requirements. Moreover, Federal OSHA has mandated the deletion of this section in the New Jersey Public Employee State Plan. N.J.A.C. 12:110-7.7(b) through (h), have been recodified as (b) through (g), respectively, as a result of this amendment.

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The rules proposed for readoption with amendments to N.J.A.C. 12:110, Occupational Safety and Health Procedural Standards for Public Employees, directly impact all public employers and employees within the State of New Jersey by affording them the same level of protection from certain recognized occupational safety and health hazards as is afforded to all New Jersey private sector employees. The amendments, as proposed, ensure that the referenced Standards for New Jersey's Public Employees are at least as effective as the U.S. Department of Labor, Occupational Safety and Health Administration Standards developed to carry out the legislative intent of the Occupational Safety and Health Act of 1970.

Economic Impact

The rules proposed for readoption with amendments will have a positive impact. Currently, these rules place a substantial economic impact on employers and will continue to do so under the rules proposed for readoption because they must provide the manpower and time necessary to carry out the administrative responsibilities imposed by these rules and the Act. A public employer must provide each of its employees with a place of employment, whether owned or leased, free from recognized hazards. Therefore, inspections, repairs and maintenance must continue to be made to ensure that there is compliance with adopted safety and health standards. Consequently, substantial recording and reporting requirements for occupational injuries and illnesses to public employees must continue to be maintained.

It is not anticipated that the amendments to N.J.A.C. 12:110 will have any economic impact on New Jersey's public employers or public employees since they are commensurate with presently existing OSHA requirements and do not impose additional monetary costs thereon.

Federal Standards Statement

The rules proposed for readoption with amendments do not contain any standards or requirements that exceed standards or requirements imposed by Federal law. Rather, New Jersey's Safety and Health Standards for Public Employees are being amended to bring them into conformance with the Federal OSHA Standards (see 29 U.S.C. §§651 et seq.) as required by New Jersey's Developmental Plan under its initial approval as a State Plan for Public Employees Only.

Jobs Impact

The Department does not anticipate any job creation or loss of jobs as a result of the rules proposed for readoption with amendments.

Agriculture Industry Impact

The Department does not anticipate any impact upon the agriculture industry as a result of the rules proposed for readoption with amendments.

Regulatory Flexibility Statement

The rules proposed for readoption with amendments do not impose any reporting, recordkeeping or compliance requirements on small businesses, as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., since the rules solely impact public employers and employees. The reporting, recordkeeping and other compliance requirements imposed on public employers and employees have been amended to reflect the changes in the Federal Recordkeeping Standard which was adopted by reference on September 4, 2001 (see 33 N.J.R. 2994(a)), and will impose no additional financial burden on public employers.

Smart Growth Impact

The rules proposed for readoption with amendments will not impact on the development or redevelopment of New Jersey's urban, suburban or rural areas with regard to issues of protecting open space, conserving natural resources, increasing transportation options and availability, reducing automobile traffic and dependency, stabilizing property taxes or providing for affordable housing. The rules will not, therefore, impact on the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 12:110.

Full text of the proposed repeals may be found in the New Jersey Administrative Code at N.J.A.C. 12:110-5.2 through 5.12.

Full text of the proposed amendments follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

SUBCHAPTER 4. INSPECTIONS, ORDERS TO COMPLY, AND PENALTIES

12:110-4.4 Conduct of inspections

(a)-(h) (No change.)

(i) Whoever knowingly makes any false statements, representation or certification, verbally or in writing, in any application, record, report, plan or other document filed or required to be maintained pursuant to this chapter shall be liable for an administrative penalty pursuant to N.J.A.C. 12:110-4.11.

SUBCHAPTER 5. RECORDING AND REPORTING OCCUPATIONAL INJURIES AND ILLNESSES

12:110-5.1 Scope of subchapter

(a) This subchapter establishes procedural rules for recording and reporting occupational injuries and illnesses of public employees involving work-related deaths, injuries and illnesses, other than minor injuries which require only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or of motion, or transfer to another job. [Any information which identifies an individual employee shall be confidential.]

(b) New Jersey adopted 29 CFR §1904 by reference at N.J.A.C. 12:100-4.2, in the New Jersey Register on September 4, 2001 (33 N.J.R. 2994(a)). All requirements for the recording and reporting of work-related deaths, injuries and illnesses are contained in 29 CFR §1904 with the following exceptions:

1. All references to the Secretary of Labor shall be deemed to mean the Commissioner of Labor of the New Jersey Department of Labor;

2. All references to OSHA shall be deemed to mean the New Jersey Department of Labor, Division of Public Safety and Occupational Safety and Health, Office of Public Employees Occupational Safety and Health (PEOSH);

3. All references to OSHA forms 300, 300A and 301 shall be deemed to mean New Jersey Occupational Safety and Health (NJOSH) forms 300, 300A and 301;

4. 29 C.F.R. §1904 Subpart B—Scope: New Jersey requires all public employers to record and report work-related deaths, injuries or illnesses as contained in this chapter;

5. 29 C.F.R. §1904.1, Partial exemption for employers with 10 or fewer employees does not apply to any New Jersey Public Employer as defined in N.J.S.A. 34:6A-7(c);

6. 29 C.F.R. §1904.2, Partial exemption for establishments in certain industries, does not apply to any New Jersey Public Employer as defined in N.J.A.C. 12:110-2; and

7. 29 C.F.R. §1904.39: reporting fatalities and multiple hospitalization incidents must be reported to the Office of Public Employees Occupational Safety and Health (OPEOSH) via the 24-hour hotline number (800) 624-1644, the 24-hour fax line (609) 292-3749, or in person to the OPEOSH at 225 East State Street, 8th Floor West, Trenton, NJ 08625 within eight hours of the occurrence.

[(b) All arguments and documentation submitted by a party must simultaneously be served on all other parties. The party making the submission must provide evidence of such service.]

Recodify existing (c)-(h) as (b)-(g) (No change in text.)

SUBCHAPTER 6. VARIANCES

12:110-6.5 Temporary variance

(a)-(f) (No change.)

(g) A copy of the order shall be served upon the applicant for the order and other parties and the terms of the order shall be published on the New Jersey Department of Labor website at www.state.nj.us/labor/ and in a newspaper situated in the geographical area where the variance was requested. It shall be a condition of the order that the affected employers shall give notice thereof to affected employees by the same means to be used to inform them of an application for a variance.

12:110-6.6 Permanent variance

(a)-(b) (No change.)

[(c) The Commissioner may issue one interim order granting relief pending a hearing.]

[(d)](e) (No change in text.)

[(e)](d) A copy of the order shall be served upon the applicant for the order and other parties, and the terms of the order shall be published on the New Jersey Department of Labor website at www.state.nj.us/labor/ and in a newspaper situated in the geographical area where the variance was requested. It shall be a condition of the order that the affected employer shall give notice thereof to affected employees by the same means to be used to inform them of an application for a variance.

SUBCHAPTER 7. DISCRIMINATION AGAINST EMPLOYEES

12:110-7.6 Remedies

(a) Warnings, reprimands, or derogatory references resulting from the protected activity which may have been placed in the complainant's personnel file may be expunged.

[(a)](b) (No change in text.)

[(b)](c) Back pay shall include unpaid salary, including regular wages, increments and across the board adjustments. Benefits shall include vacation and sick leave credits and additional amounts expended by the employee to maintain his or her health insurance coverage during the period of improper suspension or removal.

[1. Back pay shall not include items such as overtime pay and holiday premium pay.]

Recodify existing 2.-4. as 1.-3. (No change in text.)

4. Back pay shall include items such as overtime pay and holiday premium pay.

Recodify existing (c)-(e) as (d)-(f) (No change in text.)

12:110-7.7 Processing of complaint

(a) Within 10 days of receipt of the complaint, the Commissioner, or his or her designee, shall make an initial determination based on the information contained therein and upon any personal contact with the complainant, if such had been deemed necessary, to determine whether an adverse action had taken place while the complainant was engaged in a protected activity. Upon the Commissioner's, or his or her designee's, determination that the adverse action appears to have occurred because the complainant engaged in a protected activity, he or she shall provide the complainant and his or her employer with a 20-day period within which to submit written arguments and documentation in support of their position.